

February 27, 2013

Via Hand-Delivery

Honorable F. Dennis Saylor, IV
United States District Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

RE: *In Re: New England Compounding Pharmacy, Inc.*
MDL 2419; C.A. No.: 13-md-2419-FDS

Dear Judge Saylor:

The undersigned plaintiffs' counsel represent clients injured by products made by New England Compounding Pharmacy, Inc. ("NECP"). All who have signed this submission have pending cases before you or will likely have cases transferred to your Court pursuant to the transfer order entered by the Judicial Panel on Multidistrict Litigation in MDL-2419 or through future direct filing. During a conference call held on February 21, 2013 with approximately 40 plaintiffs' attorneys, there appeared to be universal support for a structure of a Plaintiffs Steering Committee ("PSC"). Thus we write to offer our suggestions as to how a PSC might be structured in order to achieve efficiency and economy and to further the interests of all plaintiffs. As exemplified herein, many plaintiffs' lawyers nationwide have come together recognizing the importance of collaboration to efficiently proceed with this litigation. Many of the attorneys have extensive experience in mass tort litigation, and have worked on several highly successful MDLs over the past decades. Most of us have concentrated our practices in the area of pharmaceutical mass torts, or in the case of larger firms, have staff dedicated within departments of their firms dedicated to this type of practice.

I. The Necessity of a Traditional PSC for this MDL

Plaintiffs' Steering Committees are recommended by the Manual for Complex Litigation, 4th ed., in situations where group members' interests may be dissimilar such that a democratic decision making process is necessary to protect constituent rights. (Section 10.221.) A PSC is also fundamental in avoiding unnecessary duplication of efforts and to control costs.

A traditional PSC is necessary in this MDL because of dissimilar interests of various plaintiff parties. We respectfully submit that the diversity of injuries, claims and legal issues, as described in more detail below, requires that the PSC consist of a sufficient number of members to ensure adequate representation of different interests.

NECP's contaminated methylprednisolone acetate ("MPA") is alleged to have caused a range of injuries. To date, the Center for Disease Control CDC reports 47 deaths and 707 cases of meningitis, infections and/or strokes. A number of plaintiffs have reported symptoms of meningitis, without a confirmed diagnosis as of yet, and others have no physical symptoms but are fearful that they will develop meningitis.

There are also consumers who allege injury caused by other NECP-compounded pharmaceuticals, apart from MPA. A number of plaintiffs have filed cases against only NECP, while others have named additional defendants such as ARL Biopharma Inc. (the company responsible for certifying that NECP samples were sterile). Others have named individuals involved with NECP, companies affiliated with NECP and non-affiliated companies, local pain clinics and hospitals. There is also geographic diversity among the state law claims asserted, which diversity itself raises choice of law, personal jurisdiction, and particular state law issues.

A traditional PSC is further necessary to avoid duplication of efforts and conserve costs. Given the volume of claims, a fractured and uncoordinated approach to discovery would result in duplicative efforts and unnecessary costs. By centralizing leadership in a traditional PSC the parties can effectively and efficiently move the litigation forward while reducing the burden on this Court. Additionally, a traditional PSC will allow the costs of extensive discovery to ultimately be borne by all.

We submit that the Court should appoint a PSC of at least nine members. First, a PSC of at least nine members will ensure sufficient funds to finance the litigation. In this case, the scope of this national tragedy is finally in focus. We believe, however, that others, apart from NECP only, bear responsibility. In the continuing investigation of all claims, there may be liability shown as to the suppliers of the ingredients used in the recalled products, as to the company providing the vials, as to the company charged with constructing the clean room used, as to the company responsible for cleaning the NECP facilities, and others. Even with nine members, we anticipate that each PSC member will have to make a substantial investment of funds to conduct discovery, including an electronic document depository, document coders, an e-discovery vendor, deposition and video transcripts, and to engage expert witnesses.

Second, a larger PSC would allow the appointment of counsel from both Massachusetts and from other states where there are a large number of cases. Counsel who represent clients with different types of injuries could also be appointed. A PSC of nine members will also allow for assignment of discrete tasks to subcommittees tasked with the subjects of science, discovery, ESI, regulatory issues, motion practice etc., such that each component of the litigation receives thorough and focused attention, all while still coordinating efforts together.

Undersigned counsel have participated in numerous MDLs across the country in which the Court has approved similar structures. Examples include MDL 1492 (In re: Silicone Gel Implants Product Liability Litigation, presided over by the late Hon. Samuel Pointer); MDL 1598 (In re: Ephedra Products Liability Litigation) which was presided by Hon. Jed S. Rakoff along with the associated Twin Lab Bankruptcy (In re TWIN LABORATORIES INC. and Twinlab Corporation, No. M-47 JSR); MDL 2197 (In Re: Depuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation) currently pending before the Hon. David A. Katz in the Northern District of Ohio; MDL 2299 (In Re: Actos (Pioglitazone) Products Liability Litigation) pending before Hon. Rebecca F. Doherty in the Western District of Louisiana; MDL 2244 (In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation) pending before Hon. James Edgar Kinkeade in the Northern District of Texas; MDL 1657 (In Re: Vioxx Marketing, Sales Practices and Products Liability Litigation) before Judge Eldon E. Fallon in the Eastern District of Louisiana and many others.

II. Coordinating this MDL with the Concurrent Bankruptcy

A PSC is also needed to coordinate efforts between this MDL and the NECP Chapter 11 Bankruptcy (Case No. 12-19882-HJB), currently pending in United States Bankruptcy Court for the District of Massachusetts, Eastern Division, before The Honorable Judge Henry Boroff. The Bankruptcy Court has appointed an Official Committee of Unsecured Creditors (the "Creditors Committee"), which represents the interests of hundreds of unsecured tort claimants as well as other unsecured creditors of NECP. Eight of the nine members on the Creditors Committee are tort victims or the representatives thereof, and the members are represented on the Creditors Committee by their tort attorneys, many of whom have had substantial and successful experiences in coordinating mass tort, multidistrict litigation with complex bankruptcies and some of whom have done so while serving on both the PSC in a multidistrict litigation and the creditors committee in the related bankruptcy case. Under the circumstances of this case, where close coordination, cooperation and communication between this Court's MDL and the Chapter 11 case is required to best and most efficiently serve the interests of the injured victims and their families, a larger PSC would allow membership on the PSC of at least one member of the Creditors Committee.

III. Plaintiffs' Executive Committee and Liaison Counsel

If the Court desires that there be a greater degree of centralized decision-making, a three-member Plaintiffs' Executive Committee ("PEC") could be appointed from within the nine-member PSC. In that event, the Manual for Complex Litigation delineates the roles of multiple lead counsel (i.e. a PEC.) They are charged, in consultation with other counsel, with formulating and presenting positions on substantive and procedural issues, acting on behalf of and for the group, designing and implementing discovery plans, employing

experts, arranging for support services, interfacing with opposing counsel and keeping the litigation on schedule. (Section 10.221.)

In addition to the PSC, the undersigned counsel also suggest that the Court appoint (a) a national liaison counsel, who would be responsible for administrative matters, including distributing pleadings and communicating developments in the litigation to all plaintiffs' counsel around the country, and (b) a state liaison counsel, who would be responsible for coordinating the MDL proceeding with the cases pending in the various state courts to reduce duplication, exchange information and share resources.

IV. PSC, PEC and Liaison Slate

Finally, the undersigned counsel suggest that all plaintiffs' counsel be given the opportunity to propose to the Court a slate of a potential PSC members, liaison counsel, and, if deemed necessary by the Court, potential Plaintiffs' Executive Committee members. From our experience in other multi-district litigations, if plaintiffs' counsel are able to reach a consensus on PSC membership, smoother and more efficient coordination of the litigation would result. Indeed, earlier in this case, counsel worked cooperatively to engage experts, and twenty law firms funded the four-day inspection of NECP's premises, as ordered by Magistrate Boal. These firms from across the country quickly entered into a cost sharing agreement and contributed funds to pay for consultants, and attorneys from many firms supervised and conducted the inspection on short notice. This type of cooperation and coordination should serve as a model going forward in this litigation, and should show that we will attempt to minimize inefficiencies and disputes concerning issues ancillary to the litigation.

Thank you for your consideration of our views.

Respectfully,

/s/ Frederic Ellis
Fredric L. Ellis, Esq.
Edward D. Rapacki, Esq.
Joseph M. Makalusky, Esq.
ELLIS & RAPACKI LLP
85 Merrimac Street, Suite 500
Boston, MA 02114

/s/ Anne Andrews
Anne Andrews, Esq.
John Thornton, Esq.
ANDREWS & THORNTON
2 Corporate Park, Suite 110
Irvine, California 92606

/s/ Kimberly Dougherty
Kimberly Dougherty BBO# 658014
Janet, Jenner & Suggs, LLC
75 Arlington Street, Suite 500
Boston, MA 02116
Telephone: (617) 933-1265

Telephone: (949) 748-1000
Fax: (949) 315-3540
Email: aa@andrewsthornton.com
Website: www.andrewsthornton.com

/s/ Mark Zamora

Mark Zamora, Attorney
Zamora Firm
6 Concourse Parkway, 22nd Floor
Atlanta, GA 30328
Tel: 404.451.7781
FAX: 404.506.9223
Licensed in GA & FL
email: mark@markzamora.com

/s/ Michael Coren

Michael Coren
Harry Roth
Cohen, Placitella & Roth, P.C.
Two Commerce Square
2001 Market Street, Suite 2900
Philadelphia, PA 19103
215.567.3500 / 215.567.6019 (fax)
<http://www.cprlaw.com/>

/s/ Willard J. Moody, Jr.

Willard J. Moody, Jr.
The Moody Law Firm
500 Crawford Street, Suite 200
Portsmouth, Virginia 23704
Phone: 757-393-4093
Toll-Free: 800-368-1033
Fax: 757-393-7257
will@moodyrllaw.com
www.moodyrllaw.com

/s/ Melvin Wright

Melvin B. Wright
Colling Gilbert Wright & Carter, LLC
801 N. Orange Avenue
Suite 830
Orlando, Florida 32801
(407) 712-7300 Office
MWright@TheFloridaFirm.com

Fax: (410) 653-6903
Email: kdougherty@myadvocates.com

Robert K. Jenner, *Esq.*

Elisha Hawk, *Esq.*
Janet, Jenner & Suggs, LLC
1777 Reisterstown Road, Suite 165
Baltimore, MD 21208
(410) 653-3200
RJenner@MyAdvocates.com
BKetterer@MyAdvocates.com
JBrowne@MyAdvocates.com

/s/ Michael R. Hugo

Michael R. Hugo, Esq.
LAW OFFICE OF HUGO &
ASSOCIATES, PLLC
1 Catherine Rd.
Framingham, MA 01701
Phone: (617) 448-4888
Fax: (617) 607-9655
mike@hugo-law.com

/s/ Colin Jones

Patrick A. Salvi, Esquire
Colin M. Jones, Esquire
22 W. Washington
Suite 1600
Chicago IL, 60602
T: 312-372-1227
F: 312-372-1227
psalvi@salvilaw.com
cjones@salvilaw.com

/s/ Michael Barrett

Michael F. Barrett, Esq.
Mary T. Gidaro, Esq.
Saltz Mongeluzzi Barrett & Bendesky, P.C.
One Liberty Place
1650 Market Street
52nd Floor
Philadelphia, PA 19103
mfbarrett@smbb.com

/s/ Douglas Sheff

Douglas Sheff
Frank Federico
Sheff Law
10 Tremont Street
The Daniel Webster Suite, 7th Floor
Boston, Massachusetts 02108
Toll Free: (888) 423-4477
Local: (617) 227-7000
Fax: (617) 227-8833

/s/ Randall L. Kinnard

Randall L. Kinnard
Daniel L. Clayton
Kinnard, Clayton and Beveridge
127 Woodmont Boulevard
Nashville, Tn. 37205
(615) 297-1007
email: RKinnard@KCBattys.com
www.kinnardclaytonandbeveridge.com

/s/ John Day

John Day
Brandon Bass
Law Offices of John Day, P.C.
5141 Virginia Way, Suite 270
Brentwood, TN 37027
T: 615-742-4880
F: 615-742-4881
bbass@johndaylegal.com

/s/ Alyson Oliver

OLIVER LAW GROUP PC
950 W. University Ste. 200
Rochester, MI 48307
(248) 327-6556
aoliver@oliverlg.com

/s/ Michael D. Galligan

Michael D. Galligan
Susan Marttala
Galligan and Newman Attorneys
309 West Main Street
McMinnville, TN 37110
(931) 473-8405

/s/ Robert B. Sickels

Robert B. Sickels
One Towne Square, Suite 1700
Southfield, MI 48076
Direct Bus: (248) 746-4588
Direct Fax: (248) 936-2165
rsickels@sommerspc.com
http://www.sommerspc.com

/s/ Yvonne M. Flaherty

Yvonne M. Flaherty
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue S | Suite 2200 |
Minneapolis MN 55401
V: 612-339-6900 | F: 612-339-0981 |
www.locklaw.com

/s/ Edward B. Mulligan V

Edward B. Mulligan V
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
P: 317.636.6481
F: 317.636.2593
nmulligan@cohenandmalad.com

/s/ Douglas A. Mulvaney

STUTSMAN & MULVANEY
Attorneys at Law
1300 Cassopolis Street
P.O. Box 1337
Elkhart, IN 46515-1337
dmulvaney@smspilawyers.com
(574) 266-8500

/s/ Shannon Carey

Shannon Carey
SIEBEN, GROSE, VON HOLTUM &
CAREY
901 Marquette Ave., Suite 500
Minneapolis, MN 55402
P: (612) 233-4500

/s/ Eric J. Parker

Eric J. Parker
Susan M. Bourque
PARKER SCHEER LLP
One Constitution Center
Boston, Massachusetts 02129
Tel 617-886-0500
Fax 617-886-0100
Email: ejp@parkerscheer.com

/s/ George Nolan

William D. Leader
George Nolan
Leader, Bulso & Nolan, PLC
414 Union Street, Suite 1740
Nashville, Tennessee 37219
615-780-4114 *Office*
615-780-4122 *Fax*
615-496-7291 *Cell*
gnolan@leaderbulso.com Email
www.leaderbulso.com

/s/ Richard Golomb

Richard Golomb
Golomb Honik PC
1515 Market Street
Suite 1100
Philadelphia, Pa. 19102
(215) 985-9177
www.golombhonik.com

/s/ Richard W. Morgan

Richard W. Morgan
Pfeifer, Morgan & Stesiak
53600 Ironwood Rd
South Bend, IN 46635
(574) 674-9885

/s/ Mitchell Toups

Mitchell Toups
2615 Calder Avenue
Suite 400
Beaumont, Texas
877.453.LAWS

/s/ Chris Cain

Chris Cain
Thomas Scott, Jr.
SCOTT & CAIN
550 W. Main Street, Suite 601
Knoxville, TN 37902
(865) 525-2150
(865) 525-2120 (fax)
cain@scottandcain.com

/s/ Mark Dancer

Mark R. Dancer
Dan Myers
Dingeman, Dancer & Christopherson,
P.L.C.
100 Park St
Traverse City, MI 49684
(231) 929-0500
(231) 929-0504 (fax)
EMAIL: dancer@ddc-law.com
<http://www.ddc-law.com>

/s/ Elliot L. Olsen

Elliot L. Olsen
PritzkerOlsen, P.A.
Suite 2950
45 South 7th Street
Minneapolis, MN 55402-1652
612-338-0202
612-338-0104 Fax
elliott@pritzkerlaw.com

/s/ H. David Gibson

H. David Gibson, Esquire
Gentry Locke Rakes Moore, LLP
P.O. Box 40013
Roanoke VA 24022-0013

/s/ Deborah Gresco-Blackburn

Timothy P Wickstrom BBO 541953
Deborah Gresco-Blackburn BBO 554782
Wickstrom Morse LLP
60 Church Street
Whitinsville, MA 01588
Tel (508) 234-4551

Fax (508) 234-8811
Timothy@WickstromMorse.com
Deb@WickstromMorse.com

/s/ Tom Hardin
Tom Hardin
Patrick Carter
Hardin & Parkes
102 W. 7th Street
P.O. Box 929
Columbia, TN 38402-0929
T: (931) 548-1516
F: (931) 381-9597
thardin@hardinandparkes.com

/s/ Elizabeth A. Kaveny
Elizabeth A. Kaveny
Burke Wise Morrissey Kaveny
161 N. Clark Street, Suite 3250
Chicago, IL 60601
(312) 580-2040
www.bwmklaw.com

/s/ J. Stephen King
J. Stephen King
EVANS | PETREE PC
1000 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120
Phone: 901.525.6781 | Direct: ext 6117
Fax: 901.374.7548 | Direct Fax:
901.374.7548
jking@evanspetree.com
www.evanspetree.com

/s/ Nolan Nicely
Russell W. Updike, Esquire
Nolan R. Nicely, Jr., Esquire
Wilson, Updike & Nicely
228 North Maple Avenue
Covington, Virginia 24426
(540) 962-4986
(540) 962-8423

/s/ Marilyn McGoldrick
Marilyn McGoldrick, Esquire
Robert Naumes, Esquire
Thornton & Naumes, LLP
100 Summer St.
Boston, MA 02110
(617) 720-1333

/s/ Sharon Houston
THE LAW OFFICES OF PETER G.
ANGELOS, P.C.
Patricia J. Kasputys
Sharon L. Houston
One Charles Center
100 N. Charles Street, 22nd Floor
Baltimore, Maryland 21201
Telephone: (410) 649-2000
Facsimile: (410) 649-2101

/s/ David W. Lawrence
David W. Lawrence, Esquire
501 Park Ave., Suite A
Lebanon, TN 37087
615.444.6515
615.444.5304(fax)
davelawrence@birch.net

/s/ Michael J. Fay
Michael J. Fay
MN Atty ID # 267557
Fay & Associates, LLC
619 South Tenth Street
Minneapolis, MN 55404
T: 612.333.6900
F: 612.333.0355
www.mcfay.com

/s/ Terry A. Dawes

GEOFFREY N. FIEGER (P30441)
TERRY A. DAWES (P47854)
Fieger, Fieger, Kenney, Giroux & Danzig,
P.C.
19390 West Ten Mile Road
Southfield, MI 48075-2463
(248) 355-5555 / Fax: (248) 355-5148
g.fieger@fiegerlaw.com
t.dawes@fiegerlaw.com

/s/ Timothy A. Housholder

Timothy A. Housholder
GILREATH & ASSOCIATES
550 W. Main Street, Ste. 600
Knoxville, TN 37902
(865) 637-2442 ph.
(865)971-4116 fx.
1-800-637-7024
thousholder@sidgilreath.com

/s/ Bryan L. Bleichner

Bryan L. Bleichner
CHESTNUT CAMBRONNE PA
17 Washington Ave. North
Suite 300
Minneapolis, MN 55401
P: (612) 339-7300
F: (612) 336-2940
bbleichner@chestnutcambronne.com

/s/ Patrick T. Fennell

Patrick T. Fennell
CRANDALL & KATT
366 Elm Ave., S.W.
Roanoke, Virginia 24016
P: (540) 342-2000
pfennell@crandalllaw.com

/s/ Rebecca Blair

THE BLAIR LAW FIRM
5214 Maryland Way
Suite 207
Brentwood, TN 37027
rblair@blair-law.com

/s/ Douglas D. Small

Douglas Small
Foley & Small
1002 E. Jefferson Blvd.
South Bend, IN 46617
Toll Free: 800.276.2525
dsmall@foleyandsmall.com

/s/ M. Michael Stephenson

M. Michael Stephenson
Brady J. Rife
McNeely, Stephenson, Thopy & Harrold
2150 Intelliplex Drive, Suite 100
Shelbyville, IN 46176
(317) 825-5110
mmstephenson@msth.com
bjrife@msth.com

/s/ Robert Randall

Robert Randall
RANDALL LAW FIRM, PLLC
80 South 8th Street, Suite 900
Minneapolis, MN 55402
T: (612) 272-2171
F: (612) 605-3217
robertrandall@randallfirm.com

/s/ David Holub

LAW OFFICES OF DAVID W. HOLUB,
P.C.
8403 Merrillville Road
Merrillville, Indiana 46410
P: (219) 736-9700
F: (219) 736-9704

/s/ Edward A. Jazlowiecki

Edward A. Jazlowiecki
Jazlowiecki & Jazlowiecki
11 Lincoln Avenue
Bristol, CT 06010
(860) 674-8000
edjazlowiecki@jazlowieckilaw.com

/s/ Ven R. Johnson

Ven R. Johnson
JOHNSON LAW, PLC
535 Griswold Street
Suite 2632
Detroit, Michigan 48226
(313) 324-8300

/s/ Gregory T. Skikos

Gregory T. Skikos
Adriana Suarez Desmond
SKIKOS, CRAWFORD, SKIKOS
& JOSEPH
625 Market Street, 11th Floor
San Francisco, CA 94105
Telephone: (415) 546-7300
Facsimile: (415) 546-7301

/s/ Robert Dassow

Robert Dassow
HOVDE DASSOW & DEETS
201 W. 103rd Street, Suite 500
Indianapolis, Indiana 46290
P: 888.404.6833
F: 317.818.3111
rdassow@hovdelaw.com

/s/Philip Bohrer

Philip Bohrer
Bohrer Law Firm, L.L.C.
8712 Jefferson Highway, Suite B
Baton Rouge, Louisiana 70809
Telephone: 225/925-5297
Facsimile: 225/231-7000
Email: phil@bohrerlaw.com
Website: www.bohrerlaw.com

/s/ David W. Zoll

David W. Zoll
Michelle Kranz
ZOLL KRANZ & BORGESS, LLC
6620 W. Central Ave.
Toledo, Ohio 43504
david@toledolaw.com

/s/ Stephanie L. Arndt

Stephanie L. Arndt
Olsman Mueller Wallace & MacKenzie,
P.C.
2684 W. Eleven Mile Road
Berkley, MI 48072
Ph: 248.591.2300
F: 248.591.2304
sarndt@olsmanlaw.com

Copy to: Interim Plaintiff and Defense Liaison Counsel (via electronic mail)